
Impaired Driving

504.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of operating while intoxicated (OWI).

504.2 POLICY

The Hudson Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Wisconsin's impaired driving laws.

504.3 CHEMICAL TESTS

A person implies consent under Wisconsin law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Wis. Stat. § 343.305):

- (a) The officer has arrested the person for operating a motor vehicle while under the influence of an intoxicant, controlled substance, or any other drug.
- (b) The officer has arrested the person for operating a motor vehicle with a detectable amount of a restricted controlled substance in the person's blood.
- (c) The officer has arrested the person for operating a motor vehicle with a prohibited alcohol concentration.
- (d) The officer has arrested a person under the age of 21 who has any detectable amount of alcohol in his/her system.
- (e) The officer has arrested a person who was operating a commercial motor vehicle while having an alcohol concentration of 0.04 or more.
- (f) The officer has arrested the person for causing injury to another person while OWI or with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his/her blood.
- (g) The officer has arrested the person for causing injury to another person while operating a commercial motor vehicle with an alcohol concentration of 0.04 or more.
- (h) The officer has arrested the person for a violation of Wis. Stat. § 940.25 (injury by intoxicated use of a vehicle).
- (i) The officer has arrested the person for a violation of Wis. Stat. § 940.09 (homicide by intoxicated use of vehicle or firearm).
- (j) The person was involved in an accident resulting in substantial bodily harm to any person and the officer detects any presence of alcohol, a controlled substance, a controlled substance analog, or other drug (Wis. Stat. § 343.305(3)(ar)).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious) the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

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504.3.1 BREATH SAMPLES

The Watch Commander should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Watch Commander.

504.3.2 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Wis. Stat. § 343.305(5)(b)). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task (Wis. Stat. § 343.305(5)(b)).

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be drawn for alternate testing. Unless medical personnel object, two samples should be drawn and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

504.3.3 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee tested should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

504.3.4 STATUTORY NOTIFICATIONS

An officer requesting that a person submit to a chemical test shall read to the person the mandatory statutory warning provided by Wis. Stat. § 343.305(4).

504.4 REFUSALS

When an arrestee refuses to provide a chemical sample, officers should:

- (a) Advise the arrestee of the requirement to provide a sample (Wis. Stat. § 343.305).
- (b) Audio- and/or video-record the admonishment and the response when it is practicable.

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- (c) Document the refusal in the appropriate report.

504.4.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall serve the person with the notice of intent to revoke the person's operating privilege (Wis. Stat. § 343.305).

The Records Department shall forward copies of the notice to the appropriate prosecuting attorney, as well as the Wisconsin Department of Transportation (WisDOT), in the manner prescribed by WisDOT. If the person was operating a commercial motor vehicle, the officer shall issue the person a 24-hour out-of-service order (Wis. Stat. § 343.305(9)).

504.4.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.
- (b) The officer can articulate that exigent circumstances exist, the person has been arrested for OWI, the officer reasonably believes that a chemical test will reveal evidence of intoxication, and no reasonable objection to the withdrawal has been presented by the arrestee. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts, such as a lengthy delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

504.4.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure the forced blood draw is recorded on audio and/or video when practicable.

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- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances.
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In first-time OWI and misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

504.4.4 OFFICER ACCESS TO ADDITIONAL SAMPLE

If a person refuses to submit to a chemical test but has had a sample of blood, urine or other bodily substance taken for any reason, the officer may obtain a portion of that sample sufficient for analysis or may request that a sample be available as allowed by law (Wis. Stat. § 905.04(4)(f)).

504.5 ARREST AND INVESTIGATION

504.5.1 PRELIMINARY BREATH TESTING

An officer who has probable cause to believe that a person has committed OWI or where the officer detects any presence of alcohol, a controlled substance or any other drug on a person operating a commercial motor vehicle, may request that the person submit to a preliminary breath test (PBT). The result of the PBT may be used by the officer in deciding whether to arrest the person and whether to require or request additional chemical testing under Wis. Stat. § 343.305(3). A person may refuse to take the PBT (Wis. Stat. § 343.303).

504.5.2 OFFICER RESPONSIBILITIES

If a chemical test indicates the presence of a controlled substance or a prohibited alcohol concentration, the officer shall forward the result to WisDOT (Wis. Stat. § 343.305(7)). The person shall be informed that his/her driving privilege will be administratively suspended for six months and that the person has the right to an administrative hearing. The form to request the administrative review shall be provided to the person (Wis. Stat. § 343.305(8)). If the person was operating a commercial motor vehicle, the officer shall also issue the person an out-of-service order.

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504.5.3 ADDITIONAL TESTING

If a person submits to a chemical test requested pursuant to the implied consent law, he/she is entitled to a reasonable opportunity, upon request, to have additional chemical testing done (Wis. Stat. § 343.305(5)).

504.5.4 CRASHES

Officers investigating a person for OWI shall make all reasonable efforts to obtain a chemical sample if the person was involved in a crash that resulted in a fatality or serious physical injury (Wis. Stat. § 343.305(2)).

504.6 RECORDS DIVISION RESPONSIBILITIES

The Records Department will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office and WisDOT (Wis. Stat. § 343.305(7); Wis. Stat. § 343.305(8); Wis. Stat. § 343.305(9)).

504.7 ADMINISTRATIVE HEARINGS

The Records Department will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to WisDOT.

Any officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify the prosecuting attorney.

504.8 TRAINING

The Training Officer should ensure that officers participating in the enforcement of OWI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to OWI investigations. The Training Officer should confer with the prosecuting attorney's office and update training topics as needed.